nize the exclusive representatives, must bargain with them and must try earnestly to reach agreement. *Labor Board* v. *Sands Mfg. Co.*, 306 U. S. 332 (1939).

Congress imposed no limits on the scope of bargaining, or on the subjects concerning which employers and unions may bargain, or on the bargains they may reach, except one. The exception is that neither may use the bargain, otherwise than by agreeing to a valid clause compelling membership in the union, to so discriminate among employees as to encourage or discourage membership in a labor organization, or to bring about the discharge of employees for union activity. See, for example, *Wallace Corp.* v. *Labor Board*, 323 U. S. 248 (1944).

This Court has held that, in certain circumstances, a union may not enter into a bargain that discriminates against employees solely by reason of their race. *Steele* v. *L. & N. R. Co.*, 323 U. S. 192. (1944). Bargains under the National Labor Relations Act may not violate other laws, such as certain inhibitions of the Anti-Trust Laws. See: *Allen-Bradley Co.* v. *Local Union No. 3*, 325 U. S. 797 (1944).

Aside from these limits, Congress allowed to collective bargainers the utmost latitude in selecting the subjects on which they would bargain and deciding on the terms of their bargains.

This was necessary under the scheme that Congress set up. It would be anomalous indeed for Congress to give to a union on the one hand exclusive power to bargain for an appropriate unit of employees, and to require an employer, on the other, to bargain with that union, and yet to say, as the Court of Appeals

would have it say, that the fairness of the bargain and its validity must await a ruling from some Court or other body. If this had been the intent of Congress, Congress would have said so, as the laws of some countries have said, in requiring collective bargainers to submit their agreements to government agencies for approval.

If the law is as the Court of Appeals says it is, then the National Labor Relations Act does not mean what its language clearly says and what the courts without exception have held it says. If the Court of Appeals is correct, then the union is not the exclusive representative of employees, but merely a preliminary negotiator, with the courts holding the final and exclusive power to say ultimately what the bargain may be. The employer, in this event, although required to bargain in good faith, can never know that the bargain he reaches will be valid; the law forces him to go through an always serious, often difficult and sometimes painful ordeal without assuring him that any individual employee, through the courts, may not upset the arrangements on which he and the "exclusive" representative agreed and that, presumably, the majority of the members ratified.

The Court of Appeals uses the word "discriminate" as though, in all cases, discrimination is evil. This is not so, either in law or in common usage. Webster's International Dictionary, Second Edition, says to discriminate means:

> "To serve to distinguish; to mark as different, to differentiate.
>
> "To separate (like things) one from another in comprehension or use by discerning minute differences.

"To make a distinction; to distinguish accurately; as to discriminate between fact and fancy; also to use discernment.

"To make a difference in treatment or favor (of one as compared with others); as to discriminate in favor of one's friends; to discriminate against a special class."

The Court of Appeals seems to assume that discriminating inherently involves differentiating improperly. "Discriminate" alone is ambiguous. Unless we know the grounds of the discriminating, we cannot judge whether it is proper or improper. Differentiating in good faith, not in a way that the law forbids or in a way that interferes with inherent rights, is not improper. There is no question here of good faith. Nor is there one of inherent rights. The contracts in question created the seniority rights of all the employees. Those rights existed, and they exist now, only by virtue of the contracts. In the absence of a clear showing of the one kind of discriminating that the National Labor Relations Act forbids, the plaintiffs may not complain now on the basis of other or different rights they may have had under earlier contracts or could have had under different contracts.

Any union that represents a large unit of employees, employed in many crafts and classifications, many departments, many plants, in many localities and different circumstances, has the difficult problem of reconciling differences in the interests of many classes and groups.

It is in the union's interest as best it may to reconcile these differences, and to accommodate its policies and practices to the differing and sometimes conflict-

ing interests of various classes or groups that comprise the bargaining unit, or who may become members of the unit. In doing this, it must weigh the effect on itself of what it does that is to the greater or lesser advantage of one group or class as against another; and it must weigh the effect of what it does on the solidarity of the unit and on the bargaining strength that flows from that solidarity. It is interested in holding itself together and in holding to the greatest extent possible the loyalty of all elements of the unit. Bitter dissidence in a small group it may deem more destructive of its solidarity and bargaining strength than mild disappointment in a larger one.

In the absence, at any rate, of a clear showing of fraud or bad faith on the part of the union's bargainers, what justification is there under the National Labor Relations Act or any other law, or in common sense, for a court or other branch of the Government to substitute its judgment for the union's on what is best for the union as a whole?

A particular group of employees, such as skilled employees comprising a third of a unit, may feel strongly that they are entitled to a greater wage increase than other employees. If, in order to retain their loyalty, the union negotiates a 5-cent an hour increase for other employees and an 8-cent an hour increase for them, instead of a 6-cent an hour increase for everyone, calling upon the majority to make a sacrifice for the minority, may a court at the instance of an individual or of dissident members of the majority substitute its judgment for that of the union and set aside the contract?

And does an employer who agrees to this arrangement at the instance of an exclusive representative

with which the law compels him to deal accede to the union's demands at his peril?

May a union and an employer agree to differing terms and conditions of employment for various elements of a bargaining unit only if they can show to the satisfaction of a court, by tangible, objective standards and measurable and measured criteria, that differing circumstances of each group justified different terms for it, and that the agreement in its entirety was for the benefit of the union as a whole?

The Court of Appeals ignores the practice of unions to submit their proposed collective agreements to their members to ratify. In the present case, it was entirely foreseeable that the clause in question could affect adversely the interests of the great majority of Ford's employees, consisting of employees who were not veterans and those who left Ford for the armed services and thereafter returned to work. May a dissident minority, or even a majority of the present employees now, years later, reverse the majority that approved the clause and set aside all that the parties did under it?

If these things are so, the collective bargaining that the law compels becomes a lottery, in which bargainers must await the outcome of trials perhaps years later to know what their agreement was, or a strait-jacket, in which one cannot safely agree to any differences, as between different groups, as to the terms of employment. It certainly would not be a method of fostering industrial peace.

Petitioner has shown that there are many types of seniority systems, by craft or classifications,

by departments, by plants or by companies, and that there are different combinations of these systems, departures from them and exceptions to them.

We have seen that courts repeatedly have held it within the power of bargaining representatives to negotiate seniority rules and to change the rules from time to time, notwithstanding that the changes affect for better or worse the then current standing of particular individuals or groups. See: *Aeronautical Industrial District Lodge 727* v. *Campbell, et al.*, 337 U. S. 521 (1949); *Hartley* v. *Brotherhood of Railway and Steamship Clerks, etc.*, 283 Mich. 201, 277 N. W. 885 (1938).

We shall not labor this point, except to say that most seniority systems set up an artificial standard for favoring one employee as against others, substituting the accident of the time when each entered a seniority group for other considerations, even more valid ones, in preferring them. Seniority, by its nature, invariably works in favor of one employee as against another.

In great establishments, there is no system of seniority that in and of itself is naturally or necessarily correct, or that affords an inflexible standard by which to measure the correctness of the system. Seniority is a matter of agreement in the light of the circumstances, and it is changed by agreement from time to time in the light of then existing circumstances. It always involves a precise differentiating of groups and individuals in the light of circumstances at the time.

As the end of World War II approached, unions and employers foresaw the influx into the plants of

veterans as new employees, as women and elderly people resumed their peacetime pursuits. What considerations led unions to include in their contracts clauses crediting veterans who had not worked for particular employers with standing for seniority from the time they entered the armed forces are not of record. The safest thing to assume is that the unions did not think it wise to have in the plants cohesive, vocal and dissident minorities whose dissatisfaction with their standing under the seniority rules might disrupt the unions and weaken their bargaining position. The Selective Training and Service Act (50 U. S. C. App. Sec. 308) assured all veterans who returned to work full seniority credit for time they spent in the armed forces. Whom does the law empower to judge and who, indeed, is best qualified to judge the validity of the claim of non-employee veterans that they, too, should receive seniority credit for all time they spent in the armed services? And whom does the law empower to judge, and who is best qualified to judge, the effect upon the union as a whole of recognizing or denying this claim?

As between a court and a bargaining agent that the law says is "exclusive" and whom the employer must recognize as such, we submit that the court easily comes out second.

Irrelevant here is the ruling of this Court in *Steele v. L. & N. R. Co.*, 323 U. S. 192 (1944). In that case, Negroes whom the union excluded as members and against whom it discriminated because of their race had no voice in its affairs. Mr. Justice Douglas emphasized this circumstance at pages 199-202. Here, membership in the respondent union was available to

all the plaintiffs. Indeed, the complaint alleges they are members (R, 3).

They and the classes they purport to represent, like all other employees, had full opportunity, when the union was considering the clauses in question and when the question of ratifying was before them, to present their views and to protect what they considered their interests. They have the right now, through proper procedures within their union, to seek a change in the seniority rules. Or they have the alternative right under the National Labor Relations Act to change their bargaining representative or to vote for no representative.

We submit that, if their claims are valid, it is to these procedures under the National Labor Relations Act that plaintiffs must resort, and it is to them that this Court must compel them to resort if collective bargaining as we have known it since 1935, and for many years before, is to survive.

II.

The Court of Appeals apparently, and erroneously, conceived this case to present a conflict of interest between employee veterans who worked for Ford before entering the armed forces and employee veterans who did not work for Ford before entering those forces. In truth, conflicts, to the extent they exist, are between (1) non-veteran employees and employee veterans who worked for Ford before entering the armed forces and (2) employee veterans who did not work for Ford, and between members of group (2), themselves.

The opinion of the Court of Appeals says (R. 34):

> "The question squarely presented is whether the union and management can by contract create preferential seniority in men not employed when they entered the armed services as against men, also veterans, who were employed when they entered the armed services."

Throughout the remainder of the opinion, the Court adheres to this view of the question.

But the class on behalf of which the plaintiffs sue consists of all employees, veterans and non-veterans alike, whose

> "positions on the seniority roster at Ford's Louisville Works have been lowered on said seniority roster to positions lower than * * * their true hiring-in dates would entitle them by reason

of the contract clause of whose validity complaint is made herein" (R. 5).

Thus, the class includes non-veterans and veterans who formerly worked for Ford. It includes also veterans not previously employed by Ford whose service in the armed forces began after the beginning of such service of other veterans who later were employed by Ford.

Thus, the clause differentiates as between members of the very class that the respondent employees claim it favors.

This shows that the clause does not "discriminate" in favor of veterans as against non-veterans, or in favor of one class of veterans as against another. What it does is to give all veterans what the law gives to some: credit for time they spent in the armed forces.

It shows, also, that only a small minority can benefit from the clause, and that, if the majority do not wish to sacrifice any part of their seniority standing for this minority, they should correct the claimed disadvantage by normal procedures, not by litigating.

CONCLUSION.

We submit that the issue this case involves is of such great public importance and has such wide-reaching ramifications that this Court should determine it.

Respectfully submitted,

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Supreme Court of the United States

OCTOBER TERM, 1952

No. 193

FORD MOTOR COMPANY,

Petitioner,

v.

GEORGE HUFFMAN, individually and on behalf of a class, etc., and INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, CIO,

Respondents.

BRIEF OF BRIGGS MANUFACTURING COMPANY, *AMICUS CURIAE*, IN SUPPORT OF THE PETITION OF FORD MOTOR COMPANY FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

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REARDON-PARSHALL CO.

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Briggs Manufacturing Company, as *amicus curiae*, submits this brief in support of the petition of Ford Motor Company for a writ of certiorari. Briggs has obtained the consent of all of the parties to the submission of this brief pursuant to Subdivision 9 of Rule XXVII of the Rules of this Court.

Opinions Below.

The order of the District Court is unreported (R. 26). The opinions of the Circuit Court of Appeals are reported in 195 F. 2d 170.

Interest of *Amicus Curiae*

Briggs Manufacturing Company manufactures automobile bodies and related parts such as metal stampings, interior trim and plastic panels and moldings. The Company also manufactures aircraft assemblies, plumbing fixtures and fittings, vitrous china, paints and refinishing materials. It employs over 30,000 people in plants located in four states. The respondent Union is the exclusive bargaining agent for most of these employees.

In May, 1946, the Union notified Briggs that the membership of one of its Locals had voted to take strike action against the Company. One of the demands upon which this strike vote was predicated was that new employees who were war veterans be granted seniority effective as of the date of their entry into the service.

On July 19, 1946, the Union and Briggs executed a supplemental agreement containing veterans' seniority provisions similar to those later incorporated in the agreement between Ford and the Union. Those provisions stated in part:

> "(2). Any veteran of the present war who was not employed by any person or company at the time of his entry into the military service of the Armed Forces or the Merchant Marine of the United States and who is a citizen of the United States and served with the Allies and who is hired by this Company after he is relieved from training and service in the Armed Forces or after completion of service in the Merchant Marine, shall upon having been employed for ninety (90) days and not before received seniority credit for the period of such service subsequent to January 1, 1941, provided:
>
> * * * * *

"(3). It is further understood and agreed that all veterans in the employ of the Company at the time of this Areement shall receive the same rights and privileges under this Agreement as if it had been in existence on the date of their first employment with the Company."

This agreement remained in effect until August 26, 1949, at which time it was terminated by Briggs and the Union without prejudice to seniority credits already acquired thereunder.

Briggs estimates that over 1400 of its present employees, who had not worked for the Company prior to their entry into military service, have acquired seniority credits pursuant to the agreement of July 19, 1946, and that at least an equal number of veterans who are no longer with the Company have enjoyed the benefits extended by that agreement.

At the present time 13,493 Briggs employees have seniority dating from and after January 1, 1941, and are, therefore, affected by the above agreement. Due to the large turnover, particularly among newer employees, it would be impossible to determine the total number of persons who, at one time or another, have been affected by these veterans' seniority provisions, without making a detailed examination of the records of every person employed by the Company subsequent to January 1, 1941.

The revision of its seniority list dating back to 1941 and covering thousands of employees, which would be required by the application of the Court of Appeals decision, would impose a tremendous burden upon Briggs. Employees who have gained seniority rights would find their positions entirely changed; many would be transferred, others demoted and still others would be laid off. Inevitable unrest among the union membership and a flood of grievances would result from such a revision.

Of equal importance is the possibility of a multiplicity of lawsuits for damages against both the Union and employers. Two such actions have been filed already and if the Court of Appeals' decision is not reversed that number will undoubtedly increase to such an extent as to become an unreasonable burden not only on the union and employers but on the courts as well.

Reasons for Granting the Writ

In addition to concurring in the reasons for granting the writ presented by the petitioner, we wish to present an additional consideration which the Court of Appeals failed to take into account and which we believe requires a re-examination and reversal of its judgment.

The refusal of the Court of Appeals to recognize the right of Ford and the U.A.W.-C.I.O. to contract to give all veterans employed by Ford full seniority credit for the time they devoted to the service is apparently based upon the erroneous assumption that the application of such a contract would prefer veterans without actual experience to veterans with actual experience and the equally erroneous assumption that the seniority system in effect prior to the contract permitted no such alleged inequity or discrimination.—

The Court held that the contract was invalid because (R. 38)

> "Plainly, a contract which, in the case of lay-off, prefers men without experience over men with experience, no other facts appearing and no other valid reasons for preference existing, is discriminatory. When an employee who entered the Ford Plant in 1945 is retained in lay-offs over Huffman who entered in 1943, Huffman is discriminated against."

The Court, in effect, holds that a seniority system which fails to recognize actual employment experience is inherently unjust unless some valid reason for this failure exists. It then apparently assumes that the veteran who was first hired by the company will necessarily or even usually have most actual work experience. The assumption obviously ignores the fact that an employee may have entered the armed forces within a matter of days or weeks after he was first employed by Ford and remained in the service many months after other veterans had returned and resumed, or in the case of new employees begun, their employment with Ford. It is apparent that a veteran who did not work for Ford prior to his entry into military service, as well as other veterans who did work for Ford, may have much more actual experience than the veteran who was employed by Ford for a short period prior to his military service. Under the provisions of Section 8 of the Selective Service and Training Act of 1940, the veteran who was employed by Ford prior to his entry into the service is, in every case, preferred over the veteran who was not, despite the fact that the former may have less actual work experience. This is because that Act gives the veteran who was employed before he entered the service seniority or experience credit equal to the time he spent in the service and does not give such credit to the veteran who was not so employed. This results in an inevitable discrimination against the more experienced veteran who, because of the intervention of World War II, never had a chance to work.

In answer to the question of why this injustice cannot be corrected by collective bargaining agreement giving all veterans seniority credits for the time they spent in the service, the Court of Appeals stated (R. 38)

> "This is a case *sui generis*. From a feeling of generosity toward men called to the war, the union and the employer have united in a sweeping contract which ultimately and in ways probably not contemplated discriminates against veterans who also gave their all in the service of the country."

It is evident from the Court's opinion that the discrimination it condemns is the fact that the agreement will not, in every case, assure that the veteran with the greatest actual working experience is retained in case of lay-off. The Court fails to recognize that the same defect was inherent in the seniority system before the collective bargaining agreement under the Selective Service and Training Act of 1940.

We are unable to comprehend how a contract which corrects the obvious inequity between veterans by giving all veterans seniority credits measured by exactly the same standard, that is, the duration of their service to the country, can be described as discriminatory because it may incidentally prefer a veteran with less actual working experience. We submit that the obvious justice of treating all veterans employed by Ford by the same standard is ample reason for failure of that seniority system to recognize actual employment experience in every case.

Conclusion

For the foregoing reasons, the petition for a writ of certiorari should be granted.

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